

24-1-4. Civil Procedures.

(1) An agency which seizes property under any provision of state law subjecting the property to forfeiture shall, as soon as practicable, but in no case more than 30 days after seizure:

(a) prepare a detailed inventory of all property seized and transfer the seized property to a designated official within the agency, who shall be responsible for holding and maintaining seized property pending a court order of release or final determination of forfeiture and disposition of property under this chapter;

(b) notify the prosecuting attorney for the appropriate jurisdiction who is responsible for initiating forfeiture proceedings under this chapter of the items of property seized, the place of the seizure and any persons arrested at the time of seizure; and

(c) give written notice to all owners and interest holders known, or reasonably discoverable after due diligence, of:

(i) the date of the seizure and the property seized;

(ii) the owner's or interest holder's rights and obligations under this chapter, including the availability of hardship relief in appropriate circumstances; and

(iii) a brief description of the statutory basis for the forfeiture and the judicial proceedings by which property is forfeited under this chapter.

(2) (a) If the seizing agency fails to provide notice as required in Subsection (1), an owner or interest holder entitled to notice who does not receive notice may void the forfeiture with respect to the owner's or interest holder's interest in the property by bringing a motion before the appropriate district court and serving it upon the seizing agency. The motion may be brought at any time prior to the final disposition of the property under this chapter.

(b) If an owner or interest holder brings a motion to void the forfeiture for lack of the notice required under Subsection (1), the court shall void the forfeiture unless the seizing agency demonstrates:

(i) good cause for the failure to give notice to that owner; or

(ii) that the owner otherwise had actual notice of the seizure.

(3) (a) Within 60 days of any seizure, the prosecuting attorney shall file a complaint for forfeiture in the appropriate district court and serve a summons and notice of intent to seek forfeiture with a copy of the complaint upon all owners and interest holders known to the prosecuting attorney to have an interest in the property. Service shall be by one of the following methods:

(i) if the owner's or interest holder's name and current address are known, either by personal service by any person qualified to serve process, by a law enforcement officer, or by certified mail, return receipt requested, to that address;

(ii) if the owner's or interest holder's name and address are required by law to be on record with any state agency in order to perfect an interest in property and the owner's or interest holder's current address is not known, by mailing a copy of the notice by certified mail, return receipt requested, to the most recent address listed by any of those agencies; or

(iii) if the owner's or interest holder's address is not known and is not on record as provided in Subsection (3)(a)(i) or (ii), by publication:

(A) for two successive weeks in a newspaper of general circulation in the county

in which the seizure occurred; and

(B) in accordance with Section 45-1-101 for two weeks.

(b) Notice is effective upon the earlier of personal service, publication, or the mailing of a written notice.

(c) The summons and notice of intent to seek forfeiture shall:

(i) be addressed to the known owners and interest holders of the seized property, and to the person from whom the property was seized;

(ii) contain the name, business address, and business telephone number of the prosecuting attorney seeking the forfeiture; and

(iii) contain:

(A) a description of the property which is the subject matter of the forfeiture proceeding;

(B) notice that a complaint for forfeiture has been or will be filed;

(C) the time and procedural requirements for filing an answer or claim;

(D) notice of the availability of hardship or bond release of the property; and

(E) notice that failure to file an answer or other claim regarding the seized property will result in a default judgment against the seized property.

(d) The complaint shall describe with reasonable particularity:

(i) the property which is the subject matter of the forfeiture proceeding;

(ii) the date and place of seizure; and

(iii) the allegations which constitute a basis for forfeiture.

(4) (a) If the prosecuting attorney does not timely file a complaint for forfeiture of the property in accordance with Subsection (3), the agency shall promptly return the property to its owner and the prosecuting attorney may take no further action to effect the forfeiture of the property.

(b) If the agency knows of more than one owner, it shall return the property to the owner who was in possession at the time of the seizure.

(5) (a) In any case where the prosecuting attorney files a complaint for forfeiture of property, an owner or interest holder may file a claim and an answer to the complaint.

(b) The claim and answer shall be filed within 30 days after the complaint is served in person or by mail, or where applicable, within 30 days after publication under Subsection (3).

(6) (a) Except as otherwise provided in this chapter, forfeiture proceedings are governed by the Utah Rules of Civil Procedure.

(b) The court shall take all reasonable steps to expedite forfeiture proceedings and shall give these proceedings the same priority as is given to criminal cases.

(c) In all suits or actions brought for the civil forfeiture of any property under this chapter, the burden of proof is on the prosecuting attorney to establish, by clear and convincing evidence, to what extent, if any, property is subject to forfeiture.

(d) The right to trial by jury applies to forfeiture proceedings under this chapter.

Amended by Chapter 388, 2009 General Session